

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

No. 07-14085

Plaintiff,

District Judge George Caram Steeh

v.

Magistrate Judge R. Steven Whalen

DAIRY FRESH FOODS, INC.,

Defendant.

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**ORDER**

On May 20, 2008, the Court took under advisement that part of Defendant's Motion to Compel Discovery [Docket #9] dealing with a document as to which Plaintiff EEOC claimed deliberative process privilege. The Court ordered Plaintiff to submit the document for an *in camera* review.

The Court has now reviewed the document in question, and finds that it is protected from discovery by the deliberative process privilege. Under the framework set forth in *Schell v. U.S. Department of Health & Human Services*, 843 F.2d 933, 940 (6<sup>th</sup> Cir. 2008), the document is both pre-decisional and deliberative. While it does contain some statements that might be characterized as facts, any factual material is inseparably intertwined with opinions and recommendations. "In some circumstances, ... the disclosure of even purely factual material may so expose the deliberative process within

an agency that it must be deemed exempted [from discovery].” *Id.*, quoting *Mead Data Central, Inc. v. United States Department of Air Force*, 566 F.2d 242, 256 (D.C.Cir.1977).

Accordingly, Defendant motion to compel discovery of this document [Docket #9] is DENIED.

SO ORDERED.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: May 27, 2008

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on May 27, 2008.

S/Gina Wilson  
Judicial Assistant